

The "Pontianak Caraka Jaya Niaga III-34"
[2010] SGHC 307

Case Number : Admiralty in Rem No 181 of 2009 (Registrar's Appeal No 13 of 2010)
Decision Date : 19 October 2010
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Toh Kian Sing SC, Leong Kah Wah and Koh See Bin (Rajah & Tann LLP) for the appellant/plaintiff; Gan Seng Chee and Leong Kai Yuan (Ang & Partners) for the respondent/intervener.
Parties : The "Pontianak Caraka Jaya Niaga III-34"

Admiralty and Shipping

19 October 2010

Judgment reserved.

Tan Lee Meng J:

1 The appellant, ANL Singapore Ltd ("ANL"), who instituted Admiralty in Rem No 181 of 2009 ("Adm No 181") against the owners of the "*Pontianak Caraka Jaya Niaga III-34*" (the "*Pontianak*"), and arrested the said vessel, appealed against the Assistant Registrar's decision to set aside the arrest, release the vessel and stay further proceedings in favour of foreign arbitration. The respondent intervener, PT Djakarta Lloyd (Persero) ("PTDL") is an Indonesian State-owned company, in whose name the vessel was registered.

Background

2 On 19 May 2009, ANL filed Adm No 181, claiming that the owners of the *Pontianak* owed it the sum of US\$575,074.20 for slot fees earned pursuant to a slot charterparty entitled "AAX Main Agreement" dated 23 November 2001, read with an Addendum dated 7 September 2004 and Memorandum of Understanding dated 17 March 2006 (the "Main Agreement").

3 On 11 June 2009, ANL arrested the *Pontianak* as security for its claim in Adm No 181.

4 PTDL intervened in the action and asserted that although it is the registered owner of the *Pontianak*, the vessel is in fact owned by the State and that it is merely the State-appointed operator of the said vessel.

5 After intervening in the action, on 24 September 2009, PTDL filed SUM 5042/2009 and applied for, *inter alia*, the following orders:

- (i) That the *Pontianak* be released and the arrest set aside; and
- (ii) That ANL's application for default judgment and sale of the vessel and further proceedings be stayed in favour of foreign arbitration.

6 On 15 January 2010, the Assistant Registrar heard PTDL's application. After hearing the parties, he set aside the arrest of the *Pontianak* and ordered her to be released on the ground that the requirements under s 4 (4) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed) had not been satisfied. He also ordered that ANL's application for default judgment and sale of the vessel and all further proceedings be stayed in favour of foreign arbitration.

7 By way of RA No 13/2010, ANL appealed against the Assistant Registrar's decisions.

The appeal

8 In the present appeal, there are two issues. The first is whether the *Pontianak* is beneficially owned by PTDL. If the said vessel is not beneficially owned by PTDL, the Assistant Registrar was correct in setting aside her arrest and ordering her release. The second issue is whether the proceedings should be stayed in favour of foreign arbitration in accordance with the terms of the contract between the parties.

9 In [2010] SGHC 306, which concerns Adm in Rem No 175 of 2009 ("the earlier judgment"), I considered whether the *Makassar*, another vessel registered in PTDL's name, is beneficially owned by PTDL. Like the *Pontianak*, the *Makassar* was also constructed under the Caraka Jaya III programme. Counsel for ANL and PTDL relied on the same arguments with respect to the beneficial ownership of the *Makassar* to support their respective cases in relation to the beneficial ownership of the *Pontianak*. In the earlier judgment, I upheld ANL's contention that the *Makassar* is beneficially owned by PTDL. For the reasons stated in the earlier judgment, I find that PTDL is also the beneficial owner of the *Pontianak*. As such, the Assistant Registrar's decision to set aside the arrest of the *Pontianak* and his order to release the said vessel are overruled.

10 As for the second issue in the appeal, PTDL contended that as the parties are required by their contract to resolve their differences by means of arbitration, the court should stay all further proceedings in Adm No 181 in view of s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA"), which provides as follows:

Enforcement of international arbitration agreement

6 —(1) Notwithstanding Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.

(2) The court to which an application has been made in accordance with subsection (1) shall make an order, upon such terms or conditions as it may think fit, staying the proceedings so far as the proceedings relate to the matter, unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed.

11 I also considered the effect of the arbitration clauses in the parties' contract and the effect of s 6 of the IAA in the earlier judgment. The arguments advanced by the parties for and against a stay of proceedings in Adm No 181 were the same arguments put forward by them in relation to the proceedings considered in the earlier judgment. For the reasons stated in the earlier judgment, I affirm the decision of the Assistant Registrar to stay the proceedings in Adm No 181 so that the parties may resolve their dispute through arbitration.

Costs

12 I make no order on costs for the appeal. The order on costs below is set aside.

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